



# STUART GRIMLEY MP

Member for Western Victoria  
State Leader of Derryn Hinch's Justice Party



The Hon. Anthony North QC  
Victorian Law Reform Commission  
GPO Box 4637,  
Melbourne Vic 3001

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Tuesday 15 December, 2020

## Re: Submission - Improving the Response of the Justice System to Sexual Offences

Dear Mr North,

I'd like to introduce myself as a Member for Western Victoria within the Legislative Council of Victoria. I'm also the State Leader of Derryn Hinch's Justice Party and therefore, as you can imagine, my office and I have regular contact with victim-survivors and often their experiences with Victorian courts.

My proposal through my submission, is to require the Crime Statistics Agency to report on the reasons for the high attrition rates in Victoria; the reasons why many sexual assault cases are withdrawn, supplied by Victoria Police through their on-the-ground work.

"You do not know what you cannot find" – that was the principle which underpinned my recent motion in the Legislative Council. How can you change something if you do not know the problems that warrant a change?

In context, we must know the reasons why sexual assault cases are being withdrawn, not pursued and not prosecuted in order to address Victoria's low rates of reporting and high rates of attrition.

If victims of crimes, especially sexual crimes, are not coming forward, how are we going to rehabilitate or address the behaviour? This is most important for recidivist offenders who without proper treatment, will continue to offend. Not the least, sexual assaults also have a devastating effect on survivors and their families.

This problem of underreporting builds on a big problem we still have in Victoria – and Australia more broadly – regarding the perceptions of sexual crimes including that these are 'taboo' topics to talk about and more disturbingly that some victims 'ask for it' - otherwise known as victim-blaming. When a sexual assault is reported in the media, we hear at times some people say 'well they should not have been walking there at night' or 'well, look at what they were wearing.'

An ABC Investigations piece online in January this year, showed that in Victoria "*complaints withdrawn* soared to one in four in 2018" – but without context, how do we know what this means? In this same story, Don Weatherburn, a Professor at UNSW said (and I quote) "that is a problem because if the police do not keep track of why reports of sexual assault do not result in legal action, there is little anyone can do to improve the number of successful prosecutions".



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Karen Willis, executive director of Rape and Domestic Violence Services Australia, says regarding police recording data that "it is a tick a box [exercise]" probably suggesting that it should be more than just that.

I am grateful to have met with the new Chief Commissioner Shane Patton via Zoom, recently. In this meeting, the general reason for not pursuing the database was that Law Enforcement Assistance Program (LEAP) and Interpose are not supported by such changes in data input which may further complicate the extraction of data. Whilst this may be the case, I think this is a reason to pursue changes to police databases that are reported to the public through the Crime Statistics Agency.

The idea of a database to contextualise attrition has been called on or suggested since 2006 in New South Wales. Here, the Bureau of Crime Statistics and Research (BOCSAR) reported the need to have further context or explanation around reasons for withdrawal including "In cases that are cleared without any charges being laid, police commonly include a notation on their systems such as arrest not desired or no formal action concerning the suspected offender. These descriptors, however, provide no insight into why the offence was cleared and criminal proceedings not commenced."

The report identified several key questions in this space, namely, in particular, what are the precise reasons police and prosecutors do not commence criminal proceedings in the first instance? This data is vital as it is essential to understand the reasons underlying the closure of an incident without the initiation of criminal proceedings.

The findings of the report go on to say that this could be achieved by tracking cases from the reporting of the incident through to conclusion to assess the precise reasons for the decisions made at various stages, and routinely record this data on their law enforcement databases.

According to the [BOSCAR report](#):

- In NSW in 2004 the number of sexual offences reported to police exceeded the number of proven charges by about ten to one. This study estimates that approximately eight percent of sexual offences committed against children and ten percent of recorded sexual offences against adults reported to police are ultimately proven at court.
- The significant points of attrition for reported sexual offences are in the early stages of the criminal justice process. More than 80 percent of sexual offences reported to police did not result in the initiation of criminal proceedings. Six months after reporting, about 30 percent of reported sexual offences were recorded as cleared by police. Of the incidents that were cleared, slightly more than half had criminal proceedings commenced against a suspect. Of persons who had sexual offence charges initiated against them, 43 percent were found guilty of at least one charge.
- The offence with the lowest conviction rate in any jurisdiction is a sexual assault against an adult. In 2004, less than one in four of these charges finalised in the Higher Courts were proven (23%). This offence relates to sexual intercourse without consent.
- The conviction rate for aggravated sexual assault against an adult is somewhat higher at 36 percent. While around the same proportion of aggravated and non-aggravated sexual assault charges are withdrawn or involve guilty pleas, aggravated sexual assault charges have a higher guilty rate because those that go to trial are more likely to be proven.



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Put simply, in order to reduce high attrition, we need to understand the reasons for attrition at all stages of the criminal process.

It is imperative to note that reporting of sexual assault has gone *up* significantly in the past decade or so, and I do not try to stray from this fact. In the 2012 calendar year, the number of sexual assaults reported was just under 9,000 and the 2016 calendar year was just under 13,000 (Crime Statistics Agency). This trend is extrapolated to and can be linked as a result of the Royal Commission, the changing community attitudes towards assault and modern campaigns such as #metoo, but attrition rates are still at a rate of over 90%, and that is more the problem I allude to in this submission.

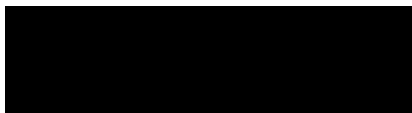
I would encourage the VLRC to seek advice from Patrick Tidmarsh, a criminologist and subject matter expert in this field. Patrick is an industry expert on sexual offending, and the investigation of sexual crimes, and his views were the catalyst for this submission and my parliamentary pursuit of this database of reasons for withdrawing sexual assault claims.

One argument Mr Tidmarsh notes is important for this database is that “SOCIT would probably authorize a significant percentage more of cases than they do, if they didn’t have to second-guess what they thought the OPP would do”. This demonstrates that there are instances where senior uniform Victoria Police members probably don’t send case files to the OPP because they think it won’t be pursued or won’t make it to court. So, the evidence is never tested.

As a former SOCIT Detective, I would also like to submit more funding and training for SOCIT officers would improve outcomes of sexual crimes through SOCIT officers being able to commit more time to each case that comes before their desk. Their specialist training, their ability to deal compassionately with survivors of sexual assault and investigative skills are commendable and should be further invested.

In summary, Victoria needs to expand its recording of the reasons sexual assault offences are withdrawn, not pursued or are not successful in conviction. This is essential into creating further reform to the criminal justice system in respect of victim-survivors of sexual assault.

Yours sincerely,



**Stuart Grimley MP**

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